

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6056 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil  
Judge?No

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KANTABEN M. PATEL

Versus

SECTION OFFICER

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Appearance:

Shri P.M. BHATT, Advocate, for the Petitioners.

Shri T.H.SOMPURA, Assistant Government Pleader, for  
the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 19/03/96

ORAL JUDGEMENT

The observation made in the order passed by the Section Officer, Revenue Department, State of Gujarat (respondent No.1 herein) on behalf of the State of Gujarat (respondent No.2 herein) on 16th July 1988 withdrawing the exemption granted under section 20 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to certain two parcels of land situated in village Sama is under challenge in this petition under Articles 226 and 227 of the Constitution of India. Thereby it has been observed that withdrawal of the exemption granted for agricultural purpose would not enable or entitle the petitioner to apply for permission under section 21 (1) of the Act.

2. The facts giving rise to this petition move in a narrow compass. The petitioners applied for exemption with respect to in all five parcels of land situated at village Sama under section 20 (1) of the Act. By the order passed by and on behalf of respondent No.2 herein on 9th January 1980, such exemption was granted. It appears that the petitioners applied for withdrawal of the exemption with respect to survey Nos.202 and 205 admeasuring 6374 square metres and 3440 square metres respectively (the disputed lands for convenience) by means of their application made on 11th November 1987. Pursuant thereto, respondent No.1 passed one order on 16th July 1988 on behalf of respondent No.2 withdrawing the exemption with respect to the disputed lands. Its copy is at Annexure-C to this petition. Therein it was observed that withdrawal of such exemption would not enable or entitle the petitioners to apply for permission under section 21 (1) of the Act. A copy of the offending direction is separately produced at Annexure-D to this petition. That aggrieved the petitioners. They have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the said observation contained in the order at Annexure-C to this petition.

3. The aforesaid direction cannot be sustained in law even for a moment in view of the relevant provisions contained in Rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules for brief) framed under the relevant provisions contained in the Act. An extract of the relevant provisions contained in Rule 11 of the Rules is at Annexure-E to this petition. It certainly empowers a landholder to apply for permission under section 21 (1) of the Act within 1139 days from the date of withdrawal of exemption. The authorities cannot be permitted to contravene the aforesaid statutory provision contained in Rule 11 of the Rules. In that view

of the matter, the offending direction contained in the order at Annexure-C to this petition cannot be sustained in law. It deserves to be quashed and set aside.

4. It however transpires from the material on record that the petitioners have not made any application in the prescribed form under section 21 (1) of the Act so far. The time-limit for the purpose of making such application even under Rule 11 of the Rules has expired. In that view of the matter, this petition can be said to have become infructuous. It is however clarified that, if the petitioners have made such application in the prescribed form under section 20 (1) of the Act within the stipulated time-limit of 1139 days from the date of the order at Annexure-C to this petition, it will have to be considered on its own merits uninfluenced by the aforesaid observation contained in the order at Annexure-C to this petition.

5. In the result, this petition fails on account of its having become infructuous as indicated hereinabove. It is hereby rejected. Rule is accordingly discharged with no order as to costs.

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